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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

NO. 226 MISCELLANEOUS

FRANK A. BARNES,
Plaintiff-Appellant,

vs.

COLUMBIA BROADCASTING SYSTEM, INC.,
Defendant-Appellee.

MOTION TO DISMISS APPEAL AND ALSO TO DISMISS PETITION FOR WRIT OF CERTIORARI.

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Defendant-appellee hereby moves to dismiss the appeal upon the ground that no right of direct appeal from the District Court to the Supreme Court exists in the instant case; and moves to dismiss the Petition for Writ of Certiorari on the ground that this method of review by the Supreme Court of an order of a District Court is not authorized by any statute of the United States, and for the further reasons that the petition is untimely, is in violation of the Rules of the Supreme Court, and presents a question so unsubstantial as not to need further argument in the Supreme Court.

NATURE OF PROCEEDING.

The complaint in the above-entitled action designated by plaintiff as "Suit for Damages" and filed in the District Court for the Northern District of Illinois seeks to enforce an alleged private right to recover damages based upon Section 315(a) of the Federal Communications Act of 1934, as amended. It alleges that in 1956 the plaintiff became a candidate for the office of President of the United States; that defendant on February 29, 1956, gave to President Eisenhower the free use of its nation-wide television and broadcasting facilities to announce his candidacy for the presidential nomination; that the plaintiff requested defendant to give him free broadcasting and television time and use of its facilities equal to that which defendant gave to President Eisenhower on February 29, 1956; that the defendant refused to do so and thereby "robbed the plaintiff of his Constitutional Rights." The complaint demanded a trial by jury and punitive judgment in favor of the plaintiff and against the defendant in the amount of $500,000,000.

The defendant filed a motion to dismiss the complaint upon the following grounds: that it failed to allege facts which show that the plaintiff was on February 29, 1956, or at any other time, a legally qualified candidate for the office of President of the United States; that the Federal Communications Act of 1934, as amended, does not authorize or create any private right of action to recover damages for alleged violation of Section 315(a) thereof; that the complaint fails to allege that the plaintiff has exhausted the administrative remedies available to him under the Federal Communications Act of 1934, as amended; and that the complaint fails to allege that the plaintiff has sustained any actual loss or damages as a result of any of the matters alleged therein.

On May 17, 1957, the District Court sustained defendant's motion and dismissed the complaint. On July 30, 1957, the plaintiff filed a notice of appeal to this Court from the order of the District Court dismissing his complaint. On September 23, 1957, the plaintiff served upon defendant a copy of a jurisdictional statement in connection with the appeal. On September 27, 1957, the plaintiff served upon defendant a notice of filing herein a Petition for Writ of Certiorari which plaintiff requests be issued by this Court and directed to the District Court for the Northern District of Illinois.

This appeal should be dismissed for the reason that no statutory right exists to take a direct appeal to the Supreme Court of the United States from an order of the District Court dismissing the complaint in a civil action in which no agency of the United States was a party. The jurisdictional statement filed by appellant mistakenly refers to U.S.C. Title 28, Section 2101(c) as providing such right of appeal. This section, however, does not purport to grant or create any right of appeal but merely to designate the time within which an appeal shall be taken.

The Petition for Writ of Certiorari should be dismissed inasmuch as no jurisdiction is conferred upon this Court by statute or otherwise for review of orders of District Courts by writ of certiorari. Furthermore the petition is untimely as filed more than 90 days from the date of the order sought to be reviewed. In addition, it does not comply with Rules 19, 21, and 23 of the Rules of this Court, and presents no question of substantiality which would require further argument in the Supreme Court.

Wherefore, defendant-appellee respectfully requests that both the appeal and the Petition for Writ of Certiorari be dismissed.

Respectfully submitted,

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